

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

JEFFREY WAYNE DAVIS,

Plaintiff,

v.

DIRECTOR, TDCJ-CID,

Defendant.

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CIVIL ACTION NO. 5:21-CV-00044-RWS

ORDER

Petitioner Jeffrey Wayne Davis, an inmate confined at the Telford Unit, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court referred this matter to the Honorable Caroline M. Craven, United States Magistrate Judge, at Texarkana, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends dismissing this petition for want of prosecution. Docket No. 6.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge. Petitioner acknowledged receipt of the Report and Recommendation on June 16, 2021. Docket No. 7. No objections to the Report and Recommendation have been filed. Accordingly, Petitioner is not entitled to *de novo* review by the District Judge of those findings, conclusions and recommendations, and except upon grounds of plain error, he is barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. 28 U.S.C. § 636(b)(1)(C); *Douglass v. United Servs. Auto. Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

Nonetheless, the Court has reviewed the pleadings in this case and the Report of the Magistrate Judge and agrees with the Report. *See United States v. Raddatz*, 447 U.S. 667, 683

(1980) (“ ‘[T]he statute permits the district court to give to the magistrate’s proposed findings of fact and recommendations ‘such weight as [their] merit commands and the sound discretion of the judge warrants’ ”) (quoting *Mathews v. Weber*, 423 U.S. 261, 275 (1976)). The Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 6) as the findings and conclusions of this Court. It is

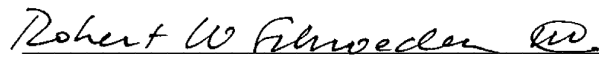
ORDERED that this petition for writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE**.

Additionally, the Court finds that Petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the petitioner need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483–84. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280–81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

Here, Petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. The factual and legal questions advanced by Petitioner are not

novel and have been consistently resolved adversely to his position. In addition, the questions presented are not worthy of encouragement to proceed further. Therefore, Petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of appealability shall not be issued.

So ORDERED and SIGNED this 4th day of August, 2021.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE